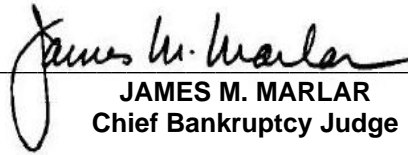


SIGNED.



Dated: April 21, 2010


JAMES M. MARLAR
Chief Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re:) Chapter 11
MURPHY RAY KITTRELL, JR.,) No. 4:09-bk-08537-JMM
Debtor.) **MEMORANDUM DECISION**

A hearing on confirmation of the Debtor's Second Amended Plan of reorganization (DN 222) came before the court on April 19, 2010. Appearances were noted on the record. After evidence was introduced, the court took the matter under advisement. Now, after receiving the entire record in this case, the court rules.

BACKGROUND

The Debtor filed for Chapter 11 reorganization on April 27, 2009. Schedules were filed May 13, 2009 (DN 17), and reflected ownership of a number of real estate properties, which were lienied to several different creditors. In his unsecured creditor list, numerous credit card obligations made up the bulk of his unsecured debts.

In his court filings and operating reports, the Debtor listed his occupation as a real estate developer and landlord.

The case was dismissed on August 14, 2009, for failure to pay the filing fee, but was reinstated the same day, when the fee was paid (DN 76, 78, 79).

STAY RELIEF

Throughout this case, stay relief orders or stipulations have either eliminated properties, or the parties have reached agreement on their treatment under a plan. The following chart summarizes that status:

Secured Creditor	Debt	Property	Motion	Disposition	Docket	Comment
M&I Marshall & Isley	\$342,560.77	10333 N. Coyote Lane, Tucson	Stay Relief	Stay lifted	21,115	
M&I Marshall & Isley	\$825,681.96	Parcel 216-84- 2315, Scottsdale	Stay Relief	Stay lifted	23, 115	
American General Home Equity	\$50,189.00	2003 Aston Martin Coupe Automobile	Stay Relief	Stipulation to keep payments current or stay lifted	29, 60, 102, 112	
Wells Fargo	\$601,930.43	2131 and 2135 N. DustyLane, Tucson	Stay Relief	Stipulation for payment of modified debt	33, 92, 127, 267, 269, 273	Agreement part of plan
James Valerio	--	State Court Action Re: Trespass (Lot 259, Scottsdale)	Stay Relief	Stay lifted	51, 141	
Vantage West Credit Union	\$12,199.09	2009 BMW Automobile	Stay Relief	Keep payments current or stay lifted	63, 99, 260, 261, 262, 263	Vehicle repossessed on 04/14/2010
Advanced Capital Mortgage	_____	Lot 137, Skyline Country Club Estates, Tucson	Debtor's Motion to Set Aside Sale	Stay annulled	68, 106, 118, 128, 137, 138, 163	Foreclosed
American General Home Equity (EFG Mortgage Acquisition)	\$3,850,000.00	26931 N. 103rd St., Scottsdale	Stay Relief	Stay lifted	75, 111, 113, 115, 140	
Deutsche Bank	\$263,074.91	7557 E. Desert Anchor Blvd., Tucson	Stay Relief	Stipulation for payment and debt modification	133, 180, 181, 235, 245	Agreement part of plan

U.S. Bank	\$148,871.72	851 Independence Ave., Tucson	Stay Relief	Hearing set for 04/19/2010	154, 192	
America's Wholesale Lender	\$195,000.00	3530 W. Massingale Rd., Tucson	Stipulation	Stipulation for payment and debt modification	233, 243	Agreement part of plan
America's Wholesale Lender	\$175,000.00	10640 E. Elkridge Place, Tucson	Stipulation	Stipulation for payment of arrearages over 60 months	234, 244	Debtor's residence. Agreement part of plan.
Wells Fargo	\$275,000.00	10999 E. Escalante, Tucson	Stipulation	Stipulation for payment and debt modification	266, 272	Agreement part of plan

PREVIOUS DISCLOSURE STATEMENT AND PLAN

On August 28, 2009, the Debtor filed a disclosure statement and plan (DN 101). The disclosure statement was approved on November 23, 2009 (DN 182).

Then, the Debtor filed his First Amended Plan and First Amended Disclosure Statement dated December 8, 2009 (DN 188, 189). These were approved and moved to confirmation hearing on January 28, 2010 (DN 190). That hearing was continued to February 24, 2010 (DN 214). The Debtor's plan drew numerous objections, as well as rejecting votes.

Then, on February 22, 2010, the Debtor filed a Second Amended Plan (DN 222).

On February 24, 2010, the Debtor failed to present any evidence in support of his plan and amended plans, and the court denied confirmation on that basis (DN 225).

CURRENT PLAN

With this background, the Debtor moved toward confirmation of the Second Amended Plan filed on February 22, 2010 (DN 222). By now, numerous properties had the stays lifted, but, at the same time, the Debtor had worked out several stipulations with secured creditors.

The February 22, 2010 plan classified the Debtor's creditors in the following way:

Class	Type	Property	Treatment
1	Administrative	n/a	If any, paid 30 days after confirmation
2	Priority	n/a	None, n/a
3	Pima County Taxes	10999 E. Escalante	Paid semi-annually, at 16% interest, over 5 years. Paid off if sold earlier or refinanced. Retain lien.
4	Countrywide Financial/Bank of America	10999 E. Escalante	\$275,000 secured claim; paid at 5.75% interest only, paid monthly. Balloon at 30 years. Paid in full upon sale or refinance. Retain lien.
5	Pima County Taxes	7557 E. Desert Anchor Blvd.	Paid semi-annually, at 16% interest, over 5 years. Paid off if sold earlier or refinanced. Retain lien.
6	Deutsche Bank	7557 E. Desert Anchor Blvd.	\$263,074.91 principal amortized over 30 years; paid at \$1,642.56 per month. 5% interest. Payments begin 12/01/2009. Retain lien.
7	Pima County Taxes	2131 N. Dusty Lane	Paid semi-annually, at 16% interest, over 5 years. Paid off if sold earlier or refinanced. Retain lien.
8	American Home Mortgage	2131 N. Dusty Lane	\$325,000 principal at 5% per annum. Interest only payments for 5 years, then balloon. Default interest reduced to 10%. Retain lien.
9	Pima County Taxes	2135 N. Dusty Lane	Paid semi-annually, at 16% interest, over 5 years. Paid off if sold earlier or refinanced. Retain lien.
10	American Home Mortgage/ Wells Fargo	2135 N. Dusty Lane	\$325,000 principal at 5% per annum. Interest only payments for 5 years, then balloon. Default interest reduced to 10%. Retain lien.
11	Pima County Taxes	3530 W. Massingale	Paid semi-annually, at 16% interest, over 5 years. Paid off if sold earlier or refinanced. Retain lien.
12	Countrywide Financial / Bank of America	3530 W. Massingale	\$195,000 principal, paid interest only, monthly, at 5% per annum. 30-year term, when principal due and payable. Retain lien.
13	Pima County Taxes	10640 E. Elkridge Place	Paid semi-annually, at 16% interest, over 5 years. Paid off if sold earlier or refinanced. Retain lien.
14	Countrywide Financial / Bank of America	10640 E. Elkridge Place	\$176,000 principal paid in accordance with terms. Past due payments will be paid per agreement (agreement not yet disclosed). Retain lien.
15	Pima County Taxes	851 N. Independence Ave.	Paid semi-annually, at 16% interest, over 5 years. Paid off if sold earlier or refinanced. Retain lien.
16	Countrywide Financial / Bank of America	851 N. Independence Ave.	\$175,000 principal. Interest at 7.5% per annum. Principal and interest reamortized over 30 years. Monthly payments of \$1,216.03. Retain lien.
17	Pima County Taxes	4660 S. Bayport Dr.	Paid semi-annually, at 16% interest, over 5 years. Paid off if sold earlier or refinanced. Retain lien.

18	Countrywide Financial / Bank of America	4660 S. Bayport Dr.	\$125,000 principal. 5% interest per annum. Interest only monthly payments, with balloon in 5 years. Retain lien.
19	Stephanie Kyle	4660 S. Bayport Dr.	\$30,000 principal; Interest at 5% per annum. Interest only payments for 5 years, then balloon. Retain lien.
20	American General	Aston Martin automobile	\$46,000 principal. 14.99% interest. \$1,000 per month until paid in full. Retain lien.
21	Tucson Federal Credit Union	911 Porsche automobile	\$48,959.80 principal; 6.99% interest. \$1,000 per month until paid in full. Retain lien.
22	All unsecured creditors on all real estate properties listed above	All real estate with deficiency claims	Undersecured, unsecured portion paid at 3.5% per annum interest, at earlier of 5-year anniversary or sale.
23	General unsecured claims	n/a	Paid 100% of allowed claims, at 3.5% in 4 equal annual instalments. First payment shall be due one year after effective date of plan (13 months after confirmation).
24	M&I Bank unsecured claim	n/a	\$429,955.73 deficiency. Paid monthly with 3.5% interest (\$1,254.04) for 5 years, then balloon.
25	Debtor's interests	--	Retained

(DN 239.)

On March 22, 2010, the same day that the Debtor filed his second Second Amended Plan (DN 239) he also filed a pleading entitled "Non-Adverse Modifications to Debtor's Second Amended Chapter 11 Plan" (DN 240). The document advised of revisions to the treatment of certain creditors, based upon agreements reached or those who had voted in favor of the plan. The court has now combed the administrative file to ascertain if any such agreements exist. Attached was a copy of the February 22, 2010 Second Amended Plan, with strikeouts and other changes, which attempted to bring current the latest agreements (DN 240).

THE CONFIRMATION HEARING

At the confirmation hearing, held on April 19, 2010, the Debtor filed his Amended Ballot Report (DN 277), attaching ballots. The court has reviewed those ballots, we well as the stipulations and agreements previously filed, and certifies the report as follows:

<u>Class</u>	<u>Type</u>	<u>Ballot</u>	<u>Treatment</u>
1	Administrative	n/a	If any, paid shortly after confirmation
2	Priority	None, n/a	IRS withdrew its objection, noting that all tax returns are current and no taxes are owed pre-petition.
3	Pima County Taxes-10999 E. Escalante	Accepts	Claim paid at 16% interest, over 5 years, unless earlier sold or refinanced. Semi-annual payments.
4	Countrywide Financial/Bank of America/Wells Fargo-10999 E. Escalante	Accepts	\$275,000 re-amortized debt. Paid over 30 years at 5.75% interest only. All due on sale or refinance (per stipulation dated 02/23/10) (DN 266, 272). Retain lien.
5	Pima County Taxes-7557 E. Desert Anchor Blvd.	Accepts	Claim paid at 16% interest, over 5 years, unless earlier sold or refinanced. Semi-annual payments.
6	Deutsche Bank- 7557 E. Desert Anchor Blvd.	Accepts	Per stipulation (DN 245), re-amortized principal of \$263,074.91. Amortized over 30 years at 5% interest. Monthly principal and interest payments. Retain lien.
7	Pima County Taxes-2131 N. Dusty Lane	Accepts	Claim paid at 16% interest, over 5 years, unless earlier sold or refinanced. Semi-annual payments.
8	American Home Mortgage/Wells Fargo-2131 N. Dusty Lane	Accepts	Per stipulation filed o/a 04/16/10 (DN 267, 273), the treatment is \$401,000 principal with 30 year amortization at 5% interest. Monthly principal and interest payments. Retain lien.
9	Pima County Taxes-2135 N. Dusty Lane	Accepts	Claim paid at 16% interest, over 5 years, unless earlier sold or refinanced. Semi-annual payments.
10	American Home Mortgage/ Wells Fargo-2135 N. Dusty Lane	Accepts	Per stipulation filed o/a 04/16/10 (DN 269, 274), the treatment is \$325,000 principal amortized over 30 years at 5% interest. Retain lien.

11	Pima County Taxes-3530 W. Massingale	Accepts	Claim paid at 16% interest, over 5 years, unless earlier sold or refinanced. Semi-annual payments.
12	Countrywide Financial / Bank of America / America's Wholesale Lender-3530 W. Massingale	Accepts	Per stipulation (DN 243) \$195,000 principal, re- amortized at 5% for 30-years. Payable monthly. Retain lien.
13	Pima County Taxes-10640 E. Elkridge Place	Accepts	Claim paid at 16% interest, over 5 years, unless earlier sold or refinanced. Semi-annual payments.
14	Countrywide Financial / Bank of America / America's Wholesale Lender-10640 E. Elkridge Place	Accepts	Per stipulation (DN 244), regular payments maintained per original agreement. Arrearages paid over 60 months. Retain lien. Debtor's residence.
15	Pima County Taxes-851 N. Independence Ave.	Accepts	Claim paid at 16% interest, over 5 years, unless earlier sold or refinanced. Semi-annual payments.
16	Countrywide Financial / Bank of America-851 N. Independence Ave.	Accepts	\$175,000 principal. Interest at 7.5% per annum. Amortized over 30 years. Monthly payments of \$1,216.03. Retain lien.
17	Pima County Taxes-4660 S. Bayport Dr.	Accepts	Claim paid at 16% interest, over 5 years, unless earlier sold or refinanced. Semi-annual payments.
18	Countrywide Financial / Bank of America-4660 S. Bayport Dr.	No vote cast.	\$125,000 principal. Interest only for 5 years at 5% per annum. Then balloon. Retain lien.
19	Stephanie Kyle- 4660 S. Bayport Dr.	Accepts	\$30,000 principal repaid at 5% interest only for 5 years. Then balloon and all due. Retain lien.
20	American General-Aston Martin automobile	Accepts	\$46,000 principal. 14.99% interest. Payments at \$1,000 per month from 09/7/09, until paid in full. Retain lien.
21	Tucson Federal Credit Union-911 Porsche automobile	No vote cast.	\$48,959.80 principal; 6.99% interest. \$1,000 monthly until paid. Retain lien.

22	All undersecured creditors on all real estate properties listed above-All real estate with deficiency claims	Debtor notes "accepts," but court could not locate ballots.	Paid at 3.5% per annum interest, at earlier of 5-year anniversary or sale.
23	General unsecured claims	Rejects	Paid 100% of allowed claims, at 3.5% in 4 equal annual instalments. First payment due one year after effective date.
24	M&I Bank unsecured claim	Accepts	Deficiency claim of \$429,955.73 allowed. Paid at 3.5% interest for 5 years at \$1,254.04 per month, then balloon.
25	Debtor's interests	No vote cast.	Retain interests

(DN 277.) The Internal Revenue Service withdrew its objection, as there are no outstanding pre-petition taxes owed (DN 217).

As for Class 18, Countrywide Financial/Bank of America/America's Wholesale Lender, the court notes that, with regard to the last effort to confirm, that creditor voted to accept the plan. (Mr. O'Meara signed the ballot on February 23, 2010.) The court will assume, unless a motion is brought to alter this decision, that such vote may be carried forward to the current plan. This creditor voted to accept the plan.

As for the Class 21 creditor secured by the Porsche, Tucson Federal Credit Union, the court finds that the treatment fairly and equitably treats this secured lender. 11 U.S.C. § 1129(b)(2)(a)(i). Class No. 21 has been accorded proper treatment, and a confirmed plan shall bind it.

As for Class 22 undersecured (unsecured) deficiency claims, the court finds their treatment to be fair and equitable. § 1129(b)(2)(B)(i).

The following creditors, on the properties listed below, retook their collateral, or made arrangements outside the plan. Therefore, the plan provides for no treatment for them (except for Class 24, M&I Marshall & Isley Bank)::

<u>Creditor</u>	<u>Collateral</u>	<u>Disposition</u>
M&I Marshall & Isley Bank	• 10333 N. Coyote Lane • Parcel 216-84-2315	Foreclosed
James Valerio	Lot 259, Scottsdale	Stay lifted to enforce state law claim
Vantage West Credit Union	2000 BMW	Agreement to keep payments current. No stay in effect
Advanced Capital Mortgage	Lot 137, Skyline Country Club Estates	Foreclosed
EFG Mortgage Acquisition	26931 N. 103rd St., Scottsdale	Foreclosed

One odd ballot was filed. Deeming itself a "Class 7" creditor, Desert Anchor Homeowners Associated filed an accepting ballot in the amount of \$2,245.63. The Debtor did not separately classify this creditor, which would typically be in a secured class by itself. The court assumes that this is the homeowners association related to the property at 7557 E. Desert Anchor Blvd. Unless advised to the contrary, the court will assume that agreements have been reached with such creditor, outside the plan.

All previous pending objections to the Debtor's plan were either withdrawn or mooted out by superceding stipulations.

CONCLUSION

The Debtor's Second Amended Plan shall be CONFIRMED.

The stay relief hearings trailing the calendar will be DENIED, as moot.

Any outstanding fees due to the U.S. Trustee shall be brought current within 30 days of entry of the confirmation order, or, upon motion of the U.S. Trustee, the confirmation order may be subject to being set aside. The court retains jurisdiction for said purpose.

A separate order will be entered. FED. R. BANKR. P. 9021. Any party aggrieved by the order must appeal within 14 days after its entry on the docket.

DATED AND SIGNED ABOVE.

1 COPIES to be sent by the Bankruptcy Notification
2 Center ("BNC") to the following:

3 Murphy Ray Kittrell, Jr., Debtor

4 Mark Bosco and Leonard McDonald

5 Howard Chorost, Attorney for Vantage West

6 Gerald O'Meara, Attorney for Deutsche Bank

7 Eugene O'Connor, Attorney for M&I Marshall & Ilsley Bank

8 Thomas Tilton, Attorney for American General Home Equity

9 Walter F. Wood, Attorney for Advanced Capital

10 Patrick Van Zane, Attorney for James Valerio

11 Pamela LaBruyere, Attorney for EFG Mortgage

12 Casadrai Makkabi, Attorney for BAC Home Loans Servicing

13 Kevin Hahn, Attorney for Wells Fargo

14 Elizabeth Wilson, Office of the U.S. Attorney

15 Denise Faulk, Office of the Arizona Attorney General

16 German Yusuf, Office of the Pima County Attorney

17 Andrew Goldberg, Attorney for U.S. Bank

18 Office of the U.S. Trustee